Filed 2/5/19 P. v. Marin CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. GERONIMO MARIN, Defendant and Appellant.	F075181 (Super. Ct. No. F16904344) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan M. Skiles, Judge.

Kevin J. Lindsley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Stephanie A. Mitchell, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

[*] Before Levy, Acting P.J., Poochigian, J. and DeSantos, J.

Appellant Geronimo Marin was convicted of one count corporal injury to a spouse in violation of Penal Code section 273.5, subdivision (a),[1] one count of battery with infliction of serious bodily injury in violation of section 243, subdivision (d), a great bodily injury enhancement pursuant to section 12022.7, subdivision (e), one lesser included count of misdemeanor false imprisonment in violation of section 236, and one count of resisting a peace officer in violation of section 148, subdivision (a)(1). Appellant was sentenced to four years each for the section 273.5 and section 243 violations, with the section 243 sentence stayed. Appellant was further sentenced to five years for the section 12022.7 enhancement, and one year for each of the four section 667.5 prison priors, for a total of 13 years.

Following a timely appeal, appellant argues the prior prison term enhancement based on his 2010 prison term must be stricken because more than five years passed between the 2010 prison term and his current offenses. We will affirm.

FACTS

On June 18, 2016, Lydia Torrez was visiting appellant with the intention of breaking up her relationship with him. Torrez was in her car when appellant approached her, entered her car, and began questioning her. After Torrez told appellant she did not want to be in a relationship with him, he became upset and asked Torrez to drive them to appellant's friend's apartment. They stayed in the friend's apartment for approximately eight hours, during which time Torrez felt she could not leave.

Torrez and appellant eventually left the apartment and entered Torrez's car. Appellant asked Torrez to tell him again that she did not want to be in a relationship with him, and when Torrez did, appellant began hitting her in the face and head with a closed fist. When Torrez began screaming, appellant told her to drive. Torrez complied, but

---

[1] Further unspecified references to codes shall be to the Penal Code.

after driving for a while she stopped the car in the road, with the hope of attracting attention from nearby people. Torrez was screaming, and appellant began hitting her repeatedly in her face, head and upper body with a closed fist.

Torrez lost consciousness, and when she regained it, appellant was still hitting her. At this point, Torrez complied with appellant's direction and drove appellant to an apartment complex. Appellant then took the keys and drove Torrez to a Shell gas station, where Torrez called 911, but quickly hung up. Torrez also asked for help from Raylinn Perez-Gonzales, a customer in the gas station. Perez-Gonzales paid for her items, confirmed with the clerk that Torrez had asked for help, and went to her car. She then told her mother, who was waiting in the car, that Torrez had asked her for help. Perez-Gonzales's mother called 911 and took down Torrez's license plate.

Appellant then drove Torrez to an alley a couple of blocks from the gas station. Officer Kennan Rodems, who was dispatched to the area in response to a reported domestic violence disturbance, drove up to the alley in a patrol car. Rodems began giving verbal commands for appellant to exit the car. Appellant exited the car, but promptly turned and ran from the scene. Rodems then spoke with Torrez, who stated she had been kidnapped and beaten by appellant. Torrez suffered pain and swelling in her face and jaw, was diagnosed with a dislocated and fractured jaw and had to have surgery. Her jaw was wired shut and she could not eat or speak for two months.

On December 30, 2016, following a jury trial, appellant was found guilty of the above mentioned charges.[2] Appellant waived his right to a jury trial as to his

---

[2] One count of corporal injury to a spouse in violation of Penal Code section 273.5, subdivision (a), one count of battery with infliction of serious bodily injury in violation of section 243, subdivision (d), a great bodily injury enhancement pursuant to section 12022.7, subdivision (e), one lesser included count of misdemeanor false imprisonment in violation of section 236, and one count of resisting a peace officer in violation of section 148, subdivision (a)(1).

enhancements and proceeded to a bench trial on January 3, 2017. The superior court found "the last date that [appellant] was in custody for purposes of the [five-year] washout [period] under [section] 667.5 was June the 19th, 2011. The Court finds that that date means that the offense date of June 18th, 2016, is within that [five-year] window." On that basis, the superior court found all four of appellant's prison priors to be true.

DISCUSSION

Appellant contends the appropriate way to calculate the five-year "washout" period under section 667.5, subdivision (b) is to use the number of days in a year, rather than a calendar date-to-date calculation. Appellant turns to section 18.5 for the proposition that a "year" is defined for sentencing purposes as 364 days.

Where " 'a defendant challenges on appeal the sufficiency of the evidence to sustain the trial court's finding that the prosecution has proven all elements of the enhancement, we must determine whether substantial evidence supports that finding. The test on appeal is simply whether a reasonable trier of fact could have found that the prosecution sustained its burden of proving the enhancement beyond a reasonable doubt.' [Citation.] In making this determination, we review the record in the light most favorable to the trial court's findings." (*People v. Rodriguez* (2004) 122 Cal.App.4th 121, 129.)

However, statutory interpretation is a question of law that this court reviews de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.) " 'Our fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd

consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.' " (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 724.)

Section 667.5, subdivision (b), also known as the "washout provision," states in relevant part, "[e]xcept where subdivision (a) applies, where the new offense is any felony for which a prison sentence … is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended."

Section 18.5, subdivision (a), in turn states, "[e]very offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days. This section shall apply retroactively, whether or not the case was final as of January 1, 2015."

Primarily, there is no reason to believe the Legislature intended section 18.5 to have any widespread application to any time calculations outside the statute itself. The statute's language does not define a "year" as 364 days for all purposes. Rather, the statute very narrowly prescribes that when an offense is "punishable by imprisonment in a county jail up to or not exceeding one year," that period shall not exceed 364 days.

(§18.5, subd. (a).) Appellant asks this court to interpret section 18.5 as defining a year as 364 days for all time calculations in the Penal Code. Such an interpretation would be completely contrary to a plain and commonsense reading of section 18.5, and this court declines to adopt it.

Otherwise, section 667.5, subdivision (b) provides no guidance as to the appropriate calculation of a five-year period. Interpreting the term "five years" in section 667.5, subdivision (b) as five calendar years, calculated using calendar dates (and thus accounting for leap years) is a plain and commonsense reading of the statute. Such a reading is clear, workable, and does not result in absurd consequences.

As such, appellant does not appear to challenge the superior court's finding that the last day he was in custody on his most recent prior was June 19, 2011. This finding is supported by the record, which indicates appellant was returned to parole on June 19, 2011, and discharged from parole without returning to custody on July 19, 2012. Five calendar years from June 19, 2011 would be June 19, 2016. Appellant committed his current offenses on June 18, 2016—one day short of the five-year period, but short nonetheless. The superior court's finding that appellant was in custody on his most recent prior within the section 667.5, subdivision (b) five-year washout period is supported by substantial evidence.

DISPOSITION

The judgment is affirmed.